



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,689	07/15/2003	Thomas M. Sjulín	8170-063-999	1353

20583 7590 12/05/2003

PENNIE AND EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 100362711

EXAMINER

HWU, JUNE

ART UNIT	PAPER NUMBER
----------	--------------

1661

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,689

Applicant(s)

SJULIN ET AL.

Examiner

June Hwu

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1661

DETAILED ACTION

Drawings

An Official Draftsman has approved the drawings.

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant application filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164

(reproduced below) are controlling:

Art Unit: 1661

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) because the specification presents less than a full and complete botanical description and the characteristics which distinguish over related known varieties.

More specifically:

- A. The variety denomination of the claimed plant should be stated and preceded by the heading set forth in 37 CFR 1.163 (c)(5) and (d). See MPEP 1605. Correction by adding such a name is required.
- B. Page 1, line 25, Applicants should insert the term -- Application Serial -- after "No." because the cultivar Camarillo has not been issued a patent number or it patented the plant paten number should be disclosed.
- C. Page 1, line 26, Applicants should insert the pending plant application serial number (10/619692) for 'Driscoll Coronation'.
- D. Applicant should set forth in the specification a brief description how the new variety is distinguished from its parents.

Art Unit: 1661

- E. Age and growing conditions of the observed plant should be disclosed in the specification. Correction is required.
- F. On page 4, Table 1, the color descriptions of the berries' internal color as "43A - 159D" for 'Driscoll Jubilee' and "33A - 155C" for 'Driscoll Camarillo' are unclear. It is uncertain whether applicants intend the color(s) set forth to be a mixture of the two color designations, a color that varies between the two color designations, or if each color is individually present. Correction and/or clarification are necessary.
- G. Applicants should set forth in the specification the average fruiting truss length.
- H. Applicants should set forth in the specification the fruit harvest interval at a given location of culture.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

Claim Rejection

35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

Amendments in a Revised Format is Now Mandatory

Compliance to the revision to 37 CFR 1.121 is mandatory. Complete details to the revised amendment format can be found on the Internet at <http://www.uspto.gov/web/offices/com/sol/og/2003/week08/patform.htm>.


Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (703) 308-5017. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m. and off on Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

JH


ANNE MARIE GRUNBERG
PATENT EXAMINER